

PROB 12C
(REV. 12/04)

UNITED STATES DISTRICT COURT

for

WESTERN DISTRICT OF TEXAS

AMENDED

Petition for Warrant or Summons for Offender Under Supervision

FILED

DEC 18 2018

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY KZ
DEPUTYName of Offender: Rafael Garibay Case Number: SA-12-CR-1079(1)FBName of Sentencing Judicial Officer: Honorable Fred Biery, United States District JudgeDate of Original Sentence: January 10, 2014Original Offense: Conspiracy to Possess with Intent to Distribute Heroin, in violation of 21 U.S.C. §§ 846, 841(a)(1) & (b)(1)(B)Original Sentence: 60 months imprisonment followed by 5 years supervised releaseType of Supervision: Supervised Release Date Supervision Commenced: July 26, 2018Assistant U.S. Attorney: Sam L. Ponder Defense Attorney: Jay Moritz

PREVIOUS COURT ACTION

On May 22, 2017, a Probation Form 12B, Request for Modifying Conditions or Term of Supervision with Consent of the Offender was submitted to the Court requesting the search and seizure condition. On May 23, 2017, the Court approved the modification.

On June 4, 2018, A Petition for Warrant or Summons for Offender Under Supervision was submitted to the Court based on Mr. Garibay's numerous violations which included; possession of a controlled substance, drug use, failure to submit to required urinalysis and associating with the persons engaged in criminal activity.

On July 26, 2018, the term of his supervised release was revoked. Mr. Garibay was remanded to the custody of the U. S. Bureau of Prisons for a period of time served, to be followed by 60 months of supervised release.

PETITIONING THE COURT

- ☒ To issue a warrant
☐ To issue a summons

The probation officer believes that the offender has violated the following condition(s) of supervision:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
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1. **Mandatory Condition No. 2:** The defendant shall not unlawfully possess a controlled substance.

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2. **Mandatory Condition No. 3:** The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug test thereafter (as determined by the court) for use of a controlled substance, but the conditions stated in the paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
3. **Standard Condition No. 7:** The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.

Mr. Garibay failed to submit to urinalysis testing as required by the Comply system on November 15, 2018.

On November 6, 2018, a "sweat patch" results yielded positive results for methamphetamine. On November 20, 2018, during an office visit he was confronted with the positive results and signed an admission form admitting to using methamphetamine. On November 21, 2018, Mr. Garibay tested positive for marijuana and methamphetamine, however, Mr. Garibay had just entered Lifetime Recovery Facility to address his drug use. The positive urine specimen was sent to Alere Toxicology Services Inc., a secondary lab, to confirm the illicit drugs in the urine. The United States Probation Office is awaiting the results. On December 1, 2018, Mr. Garibay admitted to his counselor, James Saxton and Unit Supervisor, Christina Mendoza at Lifetime Recovery Facility, that he brought methamphetamines and ingested the drug within the treatment facility on November 24, 2018.

4. **Standard Condition No. 9:** The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer.
5. **Standard Condition No. 15:** The defendant shall submit to an evaluation for substance abuse or dependency treatment as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a program approved by the probation officer for treatment and narcotic addition or drug or alcohol dependency which may include tested and examination to determine if the defendant reverted to the use of drugs or alcohol. During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.

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On November 21, 2018, Mr. Garibay entered Lifetime Residential Facility to address his reversion to methamphetamine use. Upon arrival, he submitted a urinalysis which yielded positive for methamphetamine and marijuana. The urinalysis has been sent for confirmation with Alere Toxicology Services Inc.

On November 27, 2018, a staffing was requested by the Lifetime Residential Facility Director to address Mr. Garibay's non-complaint behavior. Mr. Garibay was confronted with numerous violations since arriving at the facility which included; being insolent towards staff, bringing in contraband, dealing drugs in the facility, not following facility policy (family dropping off items without approval), making racial slurs and gang activity. Mr. Garibay admitted he had family drop off items without receiving authorization, associating with known Mexican Mafia members, engaging in gang behavior, and selling cigarettes. However, he denied selling drugs. Mr. Garibay was sanctioned to a "Zero Tolerance" contract which states he understands if he fails to comply with facility policies one more time, he would be immediately unsuccessfully discharged from Lifetime Recovery Facility.

On December 1, 2018, Mr. Garibay admitted to his counselor, James Saxton and Unit Supervisor, Christina Mendoza at Lifetime Recovery Facility, that he brought in methamphetamines and ingested the drug within the facility on November 24, 2018.

On December 3, 2018, Mr. Garibay failed to follow policy and used the telephone without authorization. Direct care staff instructed Mr. Garibay to get off the telephone numerous times and report to his peer support group requirement, but he failed to comply.

On December 4, 2018, Lifetime staff indicated Mr. Garibay was instructed multiple times to wake up during his treatment classes. The failure to participate in his class is an indicator he was not engaging in his treatment. Due to the continued non-compliant behavior, Mr. Garibay will be unsuccessfully terminated from the residential program.

6. **Standard Condition No. 5:** The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.

Mr. Garibay has been unemployed since September 29, 2018. He filed for unemployment and he was denied. Mr. Garibay has failed to maintain stable employment.

7. **Standard Condition No. 6:** The defendant shall notify the probation officer at least 10 days prior to any changes in residence or employment.

On August 21, 2018, a home visit was conducted to verify Mr. Garibay's new residence. During the visit it was verified that he did not reside at the home and his whereabouts were unknown.

On November 19, 2018, during a staffing with his counselor it was revealed that he moved to his mother's home without informing the United States Probation Office.

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U.S. Probation Officer Recommendation: On July 26 2018, Mr. Garibay commenced his second term of supervised release. According to the presentence report, Mr. Garibay received enhancements for possession of three firearms. The report also indicates he began consuming alcohol and using marijuana when he was 15 years old. He began using cocaine at the age of 17. Mr. Garibay has participated in a drug court program which included substance abuse treatment while being supervised by the Bexar County Corrections Department. Additionally, he received a psychological evaluation which diagnosed him with major depression and provided medications to assist with the symptoms. Furthermore, he has been receiving outpatient counseling to address his current mental health and drug use. Mr. Garibay has been afforded the opportunity to participate with Center for Health Care Services, Crosspoint Inc., and most recently, residential treatment at Lifetime Recovery. It should be noted, he continued meeting with Dr. Simpson at Crosspoint Inc., to address his mental health and monitor medication. Unfortunately, he continues to use methamphetamine and admits he has not been taking his medication as prescribed.

Since his release, Mr. Garibay has exhibited the same non-compliant behavior as previously address by the Court. Mr. Garibay has been unemployed but has managed to purchase illegal drugs. Furthermore, he has admitted to bringing contraband, namely methamphetamine, into a federal facility, and has compromised the residents at the treatment center.

The United States Probation Office respectfully recommends a warrant be issued for his arrest to ensure the safety of the community. The offender can be brought before the Court to show cause why his term of supervised release should not be revoked.

☒ The term of supervision should be

☒ revoked. (Maximum penalty: 3 years imprisonment; Life supervised release; and payment of any unsatisfied monetary sanction previously imposed)

☐ extended for years, for a total term of years.

☐ The conditions of supervision should be modified as follows:

Approved:

Respectfully submitted,



Edna DeFrancesca
 Supervising U.S. Probation Officer
 Telephone: (210) 472-6590, Ext. 5336



Sandra G. Ross
 U.S. Probation Officer
 Telephone: (210) 472-6590, Ext. 5386
 Date: December 14, 2018

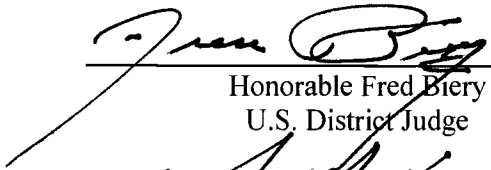
cc: Sam L. Ponder
 Assistant U.S. Attorney

Marc S. Martinez
 Assistant Deputy Chief U.S. Probation Officer

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THE COURT ORDERS:

- ☒ **No action. Offender is currently in federal custody on the original petition. Petition is being amended to remit Standard Condition No. 8.**
- ☐ The issuance of a warrant.
- ☐ The issuance of a summons.
- ☐ Other _____



Honorable Fred Biery
U.S. District Judge



Date